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PTO/SB/51 (10-00)  
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## REISSUE APPLICATION DECLARATION BY THE INVENTOR

Docket Number (Optional)

As a below named inventor, I hereby declare that:

My residence, mailing address and citizenship are stated below next to my name.  
I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is described and claimed in patent number 5,759,606 granted JUNE 2, 1998, and for which a reissue patent is sought on the invention entitled

ENGLISH MUFFIN BAGEL

the specification of which

- is attached hereto.
- was filed on 6/15/00 as reissue application number 09/585,788  
and was amended on \_\_\_\_\_  
(If applicable)

I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

I verify belief the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)

- by reason of a defective specification or drawing.
- by reason of the patentee claiming more or less than he had the right to claim in the patent.
- by reason of other errors.

At least one error upon which reissue is based is described below. If the reissue is a broadening reissue, such must be stated with an explanation as to the nature of the broadening:

The omission of the prior art step of boiling was not clarified as a negative limitation in the claims.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 0.5 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.



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## CERTIFICATE OF MAILING

**Date of mailing: AUGUST 29, 2001**

This certifies that the accompanying communication is being mailed on the above date of mailing, by prepaid FIRST CLASS MAIL, properly addressed to:

Assistant Commissioner for Patents  
Washington DC 20231

Carl C. Kling

AUGUST 29, 2001

Date

\*\*\*\*\*

Art Unit: 1761

Docket: RE - 001

Date: AUGUST 29, 2001

Assistant Commissioner for Patents  
Washington DC 20231

Application of: Robert W. Brown and Bruce A. Kade

Serial Number: 09/585,788 Filing Date: June 5, 2000

(Reissue application Certificate of Mailing Date June 1, 2000)

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SEP 21 2001  
TC 1700

Examiner: Men Tran

Title: ENGLISH MUFFIN BAGEL

**DECLARATION OF ROBERT W. BROWN**

1. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. Statements made under information and belief are identified as such, and all other statements are statements of fact.
3. I am an inventor of the captioned reissue patent application, and consider myself skilled in the art of baking bagels and related yeast-risen breads, with more than twenty years experience as a baker. As such, I have prepared and baked dozens of bakery items, including such yeast-risen breads as pastries, loaf bread of various kinds, standard bagels, and other breads, including some which do not use yeast, but use baking soda or baking powder or are unleavened.
4. I have executed a new reissue declaration. It contains a statement that all errors which are being corrected in the reissue application up to the time of filing of the declaration arose without any deceptive intention on the part of the applicants.
4. I have familiarized myself with the prior art cited in Office Action dated 6/29/2001, including with the Boston Globe article giving recipes for bagels, pita bread and English muffins.
5. The Boston Globe article properly differentiates between the three items – bagel, pita bread and English muffin. The Examiner appears to have confused the differences in the process of making these items, each of which is well known as a separate item, and each of which is made in its own way. Bagels

generally are made from yeast-risen dough, kneaded to set the gluten for rising, formed into rings, boiled, let dry on an absorbent (the Boston Globe suggests drying on absorbent paper, but commercial bakers are most likely to use burlap covered 2 x 4 planks) and then baked on a flat surface in an oven. Commercial bagel bakers commonly leave the bagels on the burlap covered 2 x 4 planks for one or two trips as the baking decks circle around the inside of the oven, then flip the partially baked bagels over off the planks onto the flat deck of the oven for the remainder of the baking time. There would be a danger of the standard bagels spreading on the hot deck if they were still wet from the boiling, with likely sticking or burning of the thin ring of the spreading wet paste as it quickly dries. Pita bread is generally unleavened, but in the Boston Globe article yeast is suggested. English muffins are generally made from yeast batter, which is poured into confining rings and baked on the hot deck of a commercial oven, or on a griddle, with a turnover to brown both surfaces. The English muffin bagel of this patent application is prepared identically to the standard bagel (with high gluten flour suggested) up to the step where the standard bagel is boiled. The English muffin bagel is not boiled, but rather is set for a long rise time, which commercial bakers call a long proofing step. During the long proofing step, the English muffin bagels rise and spread upward and outward, giving them an appearance differing

from the smooth ring of the standard bagel. The holes close, either partially or completely. See Attachment "English Muffin Bagel Presentation."

6. As to the Examiner's comment concerning Claims 1-4 and "...as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." I state that we inventors were fully in possession of the invention at the time of first patent filing, that we had made and eaten English muffin bagels according to the teaching of the patent. I further state that we described the invention in our patent application sufficiently for others to practice the invention without experimentation. Such practicing of the invention in our patent application, on information and belief, will result in the appearance described in the "English Muffin Bagel Presentation."
7. The Examiner appears to confuse the terms "batter" and "dough." This is understandable, for in many contexts they are similar. Both, for instance, may contain yeast and flour, although pancake batter usually has baking powder or baking soda instead of yeast -- and both may be precursors of yeast-risen breads. The process activity patterns in bagel dough and English muffin batter, however, are quite different. The activity pattern in English muffin bagel dough is identical to the activity pattern in standard bagel dough -- up to

the point where traditional standard bagels are boiled and where English muffin bagels are not boiled, but are set for a long rise time – before baking. The bagel dough is mixed, let to rise a bit, formed into rings, placed on boards and let to rise a bit more. The bagel rings may be kept for a short time or a long time in a refrigerated space known commercially as a "retarder." There is no significant yeast activity in the retarder.

8. The Examiner appears to be seeking fixed periods of rise time, such as can be measured in minutes. This is not common in baking, where rise time is a function of temperature, yeast characteristics, yeast nutrients present (primarily sugar, which can be added in various ways and in various amounts, or left out entirely) and other variables including the weather. The extent of rising of yeast breads is often measured in terms of "doubling in bulk" rather than in minutes. The extent of rising may be measured in other ways, such as by the presence or absence of bubbles, even by appearance. Kneading, which can differ from person to person or from machine to machine, may affect rise time as well. Kneading of dough activates the gluten and makes the dough elastic, which is significant to the rising of yeast-risen breads to the desired textures as carbon dioxide bubbles are trapped. (The carbon dioxide bubbles are essentially the exhaled breath of the yeast organisms, which are organic,

actually alive until starved or killed by baking.) In batters, however, the high water content keeps the flour mixture loose, so that carbon dioxide bubbles rise to the surface and are lost. The yeast organisms stay alive and may proliferate in a batter which is kept warm enough long enough, with nutrients and moisture present. This will normally provide a sourish taste, which is typical of standard English muffins made from batter. This may be the reason why the Boston Globe recipe mentions that the batter may be kept for a delay time after bubbles form, but on information and belief this time delay is for convenience in matching the appetites of the eaters to the convenience of the cook and has little, if anything, to do with the baking process. Under any circumstances, a delay time for standard English muffin batter is not equivalent to the long proofing time for the English muffin bagel of this patent application, since it affects the unformed batter, not the formed rings, and since the standard English muffin batter delay time has nothing to do with the conformation of the puck-shaped final result which is mandated by metal rings.

9. Batter, even thick batter, can be poured from a pitcher and will spread after it is poured. There is no significant rising of batter, because bubbles are not permanently trapped.. A reasonable dictionary definition of the term "batter,"

in context of yeast-risen breads, is: "A thin mixture of flour, eggs, and milk or water, beaten together and used in cooking. *Dalgish, "Webster's Dictionary of American English, Random House, NY ISBN 0-679-76425-9* Page 59.

10. Dough is too thick to pour. Dough typically rises as bubbles of carbon dioxide from the warmth-induced yeast activity are trapped by elastic gluten. A reasonable dictionary definition of the term "dough," in context of yeast-risen breads, is: "Flour combined with water, milk, etc. in a thick mass for baking. *Dalgish, "Webster's Dictionary of American English, Random House NY ISBN 0-679-76425-9* Page 237.

11. Yeast-risen breads made by letting dough rise and by letting batter bubble may have different tastes and different textures. The tastes may, for example, have differing sourness. The textures may, for example, have different bubbles of carbon dioxide from the yeast trapped in bubbles of gluten in dough prior to baking, or not trapped in batter as bubbles rise to the surface and pop. Note that batter breads, such as standard English muffins and such as pancakes, will typically form bubbles during cooking, just as yeast-risen dough breads will continue to rise for at least a portion of the baking time. Some of the rise during baking is attributable to expansion as water turns to

steam, and some is attributable to expansion of trapped bubbles of carbon dioxide as it is heated.

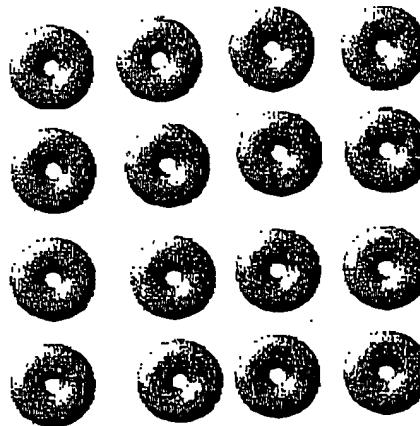
12. In summary, there are significant differences between standard bagels, English muffin bagels, pita bread, English muffins and other yeast-risen, unleavened, and baking powder or soda breads and cakes. Some of the differences are related to ingredients, but many of the differences are related to process. The process described in the patent application results in a new product, conveniently paralleling a large portion of the standard commercial process for making traditional standard bagels, and then differentiating to change the texture while keeping to the bagel taste.



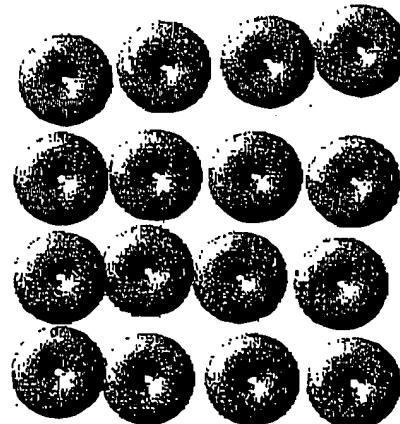
Robert W. Brown

# English Muffin Bagel Presentation

The Bagels start out as separated on the board and with a standard proofing or rise time will remain almost round maybe just touching.

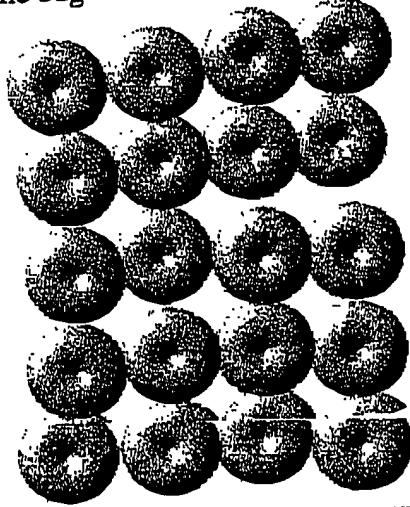


At this stage they have reached a standard size and proof ready for boiling and baking as a standard bagel retaining their roundness, touching occasionally but still retaining all the attributes of a standard bagel, such as hole and roundness.

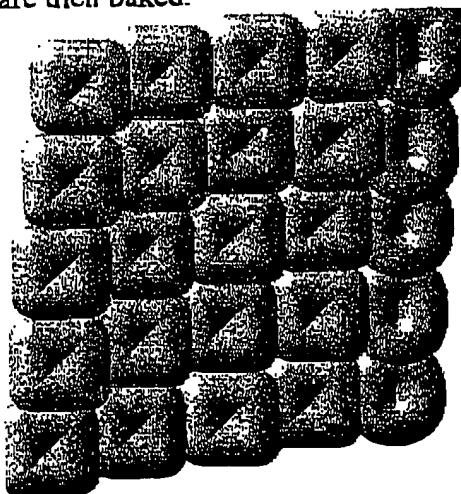


Attachment - sheet 1 of 2

This is the point at which we believe the standard bagel begins to its transformation to an English Muffin Bagel. The proofing or rising time is extended and the bagel portions now lose their hole and begin pushing together and lose their roundness (all except for the bagels on the outer edge which will retain a small round portion).



This is the final result of the long proof or rise step. The bagels are all touching , the middle bagels have taken on an almost square appearance and the hole is virtually gone. the bagels are then moistened with water and a light dusting of cornmeal is applied ,straying from regular bagel methods , the boiling step is omitted and the raw unboiled commeal coated bagels are then baked.



sheet 2 of 2

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## (REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)

Docket Number (Optional)  
RE-001

All errors corrected in this reissue application, arose without any deceptive intention on the part of the applicant. As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the United States Patent and Trademark Office connected therewith.

Name(s) \_\_\_\_\_ Registration Number \_\_\_\_\_

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 Customer Number \_\_\_\_\_

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Code Label here

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Full name of sole or first inventor (given name, family name)

Robert W. Brown

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Full name of third joint inventor (given name, family name)

Inventor's signature	Date
Residence	Citizenship
Mailing Address	

 Additional joint inventors are named on separately numbered sheets attached hereto.